PATENT   Atty Docket No.: 200208134-1
                                          App. Ser. No.: 10/632,412

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. Claims 1-20 are pending of which claims 1, 12, and 16 are independent. Claims 1, 10, 12, and 16 have been amended. Support for the amendments may be found in the original filed specification on page 6 lines 19-21, page 5 lines 6-12, page 9 lines 20-30, page 13, lines 5-22 and page 17.

Claims 1-11 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter.

Claim 10 was objected to for minor informalities.

Claims 16-20 were rejected under 35 U.S.C. §112 as allegedly being indefinite.

Claims 1, 12, and 16-18 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated over Oehler et al. (2004/0003303), hereinafter "Oehler."

Claims 2-11, and 19-20 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Oehler in view of Intel ACPICA, hereinafter "Intel."

These rejections are respectfully traversed for the reasons stated below.

Information Disclosure Statement

The Office Action states that the IDS submitted on 7/31/2003 is "being considered." Each reference cited in the IDS, however, was considered because Examiner Rahman initialed next to each reference indicating that each reference was considered. If a reference was not considered, please indicate so in the next communication and provide reasoning why the reference was not considered.

9

PAGE 5/12 * RCVD AT 5/8/2006 3:46:14 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/15 * DNIS:2738300 * CSID:703 880 5270 * DURATION (mm-ss):03-46

PATENT

Atty Docket No.: 200208134-1
App. Ser. No.: 10/632,412

Claim Rejections Under 35 U.S.C. §101

Claims 1-11 were rejected under 35 U.S.C. §101 because claim 1 is allegedly directed

to non-statutory subject matter. The Office Action states that claim 1 "lacks tangibility"

because it is not clear that claim 1 includes a hardware resource or a processor. Claim 1 has

been amended to recite "a real time operating system running on a hardware platform." Thus,

the claimed hardware platform is a tangible element of the claim. Therefore, it is respectfully

requested that this rejection be withdrawn.

Objection to the claims

Claim 10 was objected to for minor informalities because "said driver layer" and "said

hardware abstraction" lacked antecedent basis. Claim 10 has been amended to correct these

minor informalities. Therefore, withdrawal of this objection is respectfully requested.

Claim Rejections Under 35 U.S.C. §112, second paragraph

Claims 16-20 were rejected under 35 U.S.C. §112 as allegedly being indefinite

because it is allegedly unclear if "a plurality of power states" was the same or different.

However, as described on page 4 lines 16-18 and page 7 lines 21-25, the originally filed

specification explains that both the processor and the hardware resource are capable of

operating at different power states. Therefore, claim 16 is definite in light of the specification

and withdrawal of this rejection is respectfully requested.

PATENT   Atty Docket No.: 200208134-1
                                                         App. Scr. No.: 10/632,412

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection

under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed

combination, or the mechanical equivalents thereof functioning in substantially the same way

to produce substantially the same results. As noted by the Court of Appeals for the Federal

Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection

under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference
> disclosure of each and every element of the claimed invention,
> arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the

claimed invention, then the cited reference fails to anticipate the claimed invention and, thus,

the claimed invention is distinguishable over the cited reference.

Claims 1, 12, and 16-18 were rejected under 35 U.S.C. §102(e) as allegedly being

anticipated over Oehler et al. (2004/0003303), hereinafter "Oehler." This rejection is

respectfully traversed because Oehler fails to teach all the features of independent claims 1,

12, and 16, and the claims that depend therefrom.

Oehler fails to teach "power manager layer being arranged to receive real time input

from a plurality of applications" as recited in independent claims 1 and 12. The rejection

alleges that the power authority 117 of Oehler is an application that provides real time input

to a power manager layer, whereby the power manager layer is allegedly taught by the power

management system code 313 and the ACPI table 451 of Oehler. The rejection cites

11

PATENT   Atty Docket No.: 200208134-1
                                                    App. Ser. No.: 10/632,412

paragraphs 0036, 0038 and the method 700 described in paragraphs 0049-0050 to allegedly
teach these features.

The power authority 117 manages servers in a rack 101. See figure 3 and paragraphs
0026-0028 of Oehler. For example, Oehler discloses that the power authority 117 determines
the amount of power available from a power supply and allocates available power to various
servers.

Paragraph 0036 cited in the rejection discloses a power management scheme but does
not discuss the power authority 117. In paragraph 0038, Oehler discloses that the power
authority 117 may be an application that receives workload messages from all operating
systems and manages mechanisms, such as various processors and ACPI functionality. It
appears the rejection is relying on this paragraph as disclosing the power authority 117 as an
application of the applications 301 shown in figure 3. However, Oehler fails to teach that the
power authority 117 or the applications 301 provides real time input to the power
management system code 313 and ACPI table 451, which is the alleged power manager layer.
The Office Action hypothesises that table 451 exchanges information with different
components to update the power history. However, Oehler does not teach that the code 313
or the table 451 receives input from the power authority 117 or the applications 301. Note
Figure 3 of Oehler where the applications 301 communicate only with kernel 311.

Furthermore, Oehler fails to teach that the power management system code 313 or the
ACPI table 451 receives real-time input from a plurality of applications. Oehler discloses
applications 301, but fails to teach the applications 301 provide real time input to the power
management system code 313 or the ACPI table 451.

12

PATENT   Atty Docket No.: 200208134-1
                                                      App. Ser. No.: 10/632,412

Claim 16 recites "applying real time input from said at least one application to said

power manager layer, wherein real time input includes a current status and operational

requirements of each application running on the hardware platform." Claims 1 and 12 recite,

"said power manager layer being arranged to receive real time input from the plurality of

applications, wherein real time input includes a current status and operational requirements of

each of said plurality of applications running on the hardware platform." Oehler fails to teach

a power manager layer receiving real time input comprising a current status and operational

requirements for an application or a plurality of applications.

For at least the foregoing reasons, it is respectfully submitted that Oehler fails to teach

each and every element of independent Claims 1, 12, and 16 and therefore cannot anticipate

these claims. Accordingly, the Examiner is respectfully requested to withdraw the rejection

of claims 1, 12, and 16, and to allow these claims. Claims 17-18 are also allowable over

Oehler at least by virtue of their dependency upon allowable Claim 16.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for

purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria
> must be met. First, there must be some suggestion or motivation,
> either in the references themselves or in the knowledge generally
> available to one of ordinary skill in the art, to modify the reference
> or to combine reference teachings. Second, there must be a
> reasonable expectation of success. Finally, the prior art reference
> (or references when combined) must teach or suggest all the claim
> limitations. The teaching or suggestion to make the claimed
> combination and the reasonable expectation of success must both
> be found in the prior art and not based on applicant's disclosure. *In
> re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

13

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails

to render obvious the claimed invention and, thus, the claimed invention is distinguishable

over the cited reference(s).

Claims 2-11, and 19-20 were rejected under 35 U.S.C. §103(a) as allegedly being

unpatentable over Oehler in view of Intel ACPICA, hereinafter "Intel."

Initially, the Applicant's note that claims 13-15 are missing from the heading of this

rejection, be presumed to be included as part of this rejection.

Claims 2-11, 13-15, and 19-20 are patentable over the prior art of record by virtue of

their dependencies on allowable claims 1, 12, and 16, as set forth above. Accordingly,

withdrawal of this rejection and allowance of the claims is respectfully requested.

In addition, with respect to claim 2, both Oehler and Intel fail to teach or suggest an

API call to a power manager. The Office Action states that "the communication between

power authority application and ACPI OS should include API call." However, Oehler fails

to teach or suggest communication between a power authority and ACPI. Oehler discloses at

least two different embodiments. One embodiment utilizes a power authority, but the

embodiment referred to as ACPI utilizes OSPM system code to control components of the

operating system. See paragraph 36. Thus, Oehler fails to teach or suggest communication

between an application and a power manager layer, because the power management occurs

inside the OS by code 313. Therefore, there is no need for code 313 to communicate with the

applications or a power authority.

The rejection appears to rely on Intel to provide a teaching of API calls, recited in

claims 2 and 13, but fails to provide a proper motivation for combining the references. The

rejection states that it would have been obvious to combine the teachings of Oehler and Intel

PATENT

because "ACPI-CA is used by many open source operating systems." The MPEP states that "the initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done." To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp,* 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). (MPEP 706.02(j)).

The rejection fails to meet the burden required by the MPEP because it does not provide any suggestion of desirability of doing what the inventor has done. The rejection only states that ACPI-CA is used in the art. The rejection does not suggest why a person having ordinary skill in the art would want to use ACPI-CA and more particularly, why a person having ordinary skill in the art would have been motivated to use ACPI-CA in the system of Oehler. The rejection thereby fails to proffer a proper motivation for making the proposed combination.

Moreover, the rejection uses the phrase "should" in the rejection of claims 2-3, 7, 13-14, 19-20. A *prima facie* case of obviousness requires that either a reference teaches the claimed features or that the claimed features would have been obvious to a person having ordinary skill in the art based on the teachings of a reference. The rejection alleges neither of these requirements.

Claims 2-11, 13-15, and 19-20 are patentable over the prior art of record for the reasons set for above. Accordingly, withdrawal of this rejection and allowance of the claims is respectfully requested.

PATENT   Atty Docket No.: 200208134-1
                                                App. Ser. No.: 10/632,412

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

                                                Respectfully submitted,

Dated: May 8, 2006   By   _____
                                                Ashok K. Mannava
                                                Registration No.: 45,301

                                                MANNAVA & KANG, P.C.
                                                8221 Old Courthouse Road
                                                Suite 104
                                                Vienna, VA 22182
                                                (703) 652-3822
                                                (703) 880-5270 (facsimile)